

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

FAMILY COURT APPEAL NO. NO. 79 OF 2004

Mrs. Singh Neera Devi Chandra ... Appellant Bhushan

Vs.

Shri. Dr. Chandra Bhushan Singh ...Respondent

Mr. Appellant. Nitin Jamdar with Mr. N.K. Suarna for

None for Respondents.

CORAM : F.I. REBELLO &
DATED : ANOOP V. MOHTA, JJ.
P.C. : AUGUST 30, 2004 :

1. This is an appeal by the appellant to set aside the order dated 18.3.2002 passed by the Family Court Pune in M.C.A. No. 71 of 2001 in Petition No. 7 of 2001.

2. Decree for divorce came to be passed by the Family Court exparte by the judgement and order dated 8.7.2001,. The appellant herein filed an application dated 16.12.2001 along with application for condonation of delay. According to learned counsel no reply was filed by the respondent herein. Thereafter by order dated 18.3.2002 the

learned Family Court was pleased to dismiss the application for setting aside exparte decree.

3. From the Roznama of the present proceedings, we find that on 22.7.2004 the counsel for the respondent sought time. On 5.8.2004 time was further granted to enable the respondents to file their reply. On 19.8.2004 when the matter is called out neither counsel nor respondent were present. The matter was fixed for 25.8.2004. When the matter is called out none present for the appellant.

4. The short question is whether on the facts as set out, we can set aside the order dated 18.3.2002. Our attention is invited to Paragraph 3 of the judgement of the Family Court in Petition No. 7 of 2001. We find that the petitioner herein was sought to be served at the address by R.P.A.D. which was returned with the postal endorsement "Addressee is not residing at the said address". The Petitioner came to be served by issuance of public notice. In the application for setting aside exparte decree, the appellant herein had set out that the proceedings against her were decreed exparte, as she was not present on 8.7.2001. She

was staying with her parents at Lucknow and also suffering from Appendix problem and she was advised by Doctor to take bed rest for two months and in these circumstances, that the appellant herein could not appear. This application as can be seen from the application for condonation of delay was filed on 16.12.2001. The decree itself was passed on 8.7.2001. It is in these circumstances that we must consider the case of the appellant. The learned Family Court has proceeded on the footing that the appellant herein has not explained her absence and the contentions are vague and therefore, application is to be dismissed. In matters such as this, the courts do not have to take hyper-technical stand more so where the appellant herein respondent was not served by due legal process but through publication in newspaper. This ought to have been the fact position for the learned family court to take into consideration. The other aspect of the matter is according to the learned counsel for the appellant that the respondents did not file reply. The contention raised on behalf of the appellant remained uncontested. Even otherwise, we are of the view that considering the totality of the matter this was the case where sufficient cause has been shown

for not appearing before the Family Court during the proceedings before the Family Court. In the light of that order dated 18.3.2002 is set aside. Misc. Civil Application No. 71 of 2001 is allowed. The Judgement and decree dated 8.7.2001 is set aside. The matter remanded back to the family Court for hearing the matter afresh after giving opportunity to the parties from the stage where the appellants were entitled to file written statement. The parties are directed to appear before the Family Court on 20.9.2004 at 11.00 a.m. In the event neither respondent husband nor his counsel is present, Family Court to issue notice to Respondent husband. Appeal accordingly disposed off. C.C. expedited.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)